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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/737,202

Filing Date: December 16, 2003

Appellant(s): GERDER ET AL.

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Theobald Dengler  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 04/09/2008 appealing from the Office action mailed 11/14/2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief is correct.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

A substantially correct copy of appealed claims 1-21 appears on pages 22-24 of the Appendix to the appellant's brief. Appellant has omitted the amendments made to claims 9,10 and 21 in the amendment filed 05/03/2007. The correct copies of claims 9,10 and 21 are as follows:

9. A breathing gas tube in accordance with claim 1, wherein: the breathing tube has a first end adjacent the sensor means and a second end, a respirator is arranged adjacent said second end, said signal line extends along said breathing tube from said first end to said second end, the

sensor means is designed as an individual sensor means or as a combination for a measurement of temperature, humidity, flow, gas concentration or pressure.

10. A breathing gas tube in accordance with claim 1, wherein another contactless interface is provided between the breathing gas tube and the respirator.

21. A respiration system in accordance with claim 18, wherein another contactless interface is arranged between said breathing gas tube and said respirator/ventilator, the contactless interfaces includes one of an inductive interface and an infrared interface.

## **(8) Evidence Relied Upon**

US 2001/0,017,134 Bahr 8-2001

Appellant's admission of prior art (see page 7, line 9 through page 11, line 1 of Applicant's remarks filed 11/21/2006).

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bahr (US 2001/0017134) in view of Applicant's Admission of Prior art (see page 7, line 9 through page 11, line 1 of Applicant's remarks filed 11/21/06, see also MPEP2129 1 for information concerning the use of an Applicant's admission as prior art).

The Bahr reference discloses a respiratory device comprising a breathing gas tube 2 including a sensor means 28, a signal line 14 (see paragraph 0019) and a contact-type interface at the distal and proximal ends (6,8) between the signal line 14 and the sensor means 28, but does not disclose the interface as being a contactless-type (i.e. infrared or inductive in make-up). Applicant's Admission of prior art states that contactless interfaces (i.e. infrared or inductive) are well known in the electrical engineering arts (see page 7, line 9 through page 11, line 1 of

Applicant's remarks filed 11/21/06). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute a contactless-type interface as admitted by Applicant for the contact-type interface of Bahr, wherein so doing would amount to the mere substitution of one type of signal interface for another that would work or function equally as well (i.e. it could be reasonably stated that predicted results would be achieved) in the Bahr device. See *also KSR International Co. v. Teleflex Inc.*, 550 U.S.-, 82 USPQ2d 1385 (2007) for further support of Examiner's position.

In regard to claim 5,15 and 20, it can be reasonably stated that the wires associated with the signal line are capable of producing at least a minimal amount of heat if so desired. Furthermore, Examiner could take the position that the signal exchange associated with the signal line would inherently produce at least a minimal amount of heat.

In regard to claim 7, although the Bahr may not explicitly disclose the interface as being designed to transmit a supply voltage, Bahr does disclose the interface as being electrical in nature and Examiner takes the position that the interface would be capable of transmitting a supply voltage if so desired.

In regard to claims 11-17, the method as claimed would be inherent during normal use and operation of the device resulting from the combined teachings of Bahr and Applicant's admission of prior art.

### **(10) Response to Argument**

In regard to Appellant's repeated argument that one of ordinary skill in the art would not substitute a contactless-type interface (as admitted by Appellant) for the contact-type interface of Bahr because one of ordinary skill in the medical respirator arts would not have sufficient electrical engineering knowledge of electrical connections (Appellant further goes on to state that the knowledge of one of ordinary skill in the medical respirator arts would be limited to only the different gases administered to patients by respirators), including contactless-type electrical connections (as admitted by Appellant), to substitute the known contactless-type electrical interface for a the known contact-type electrical interface of Bahr (see page 10, line 15 through page 16, line 9; and page 17, line 14 through page 20, line 13 of the brief), Examiner disagrees. Examiner's position is that an ordinary artisan in the respirator arts would be versed in several engineering field (not just knowledge of the type of gases administered to patients) including electrical and mechanical engineering. Furthermore, as stated by Appellant in the instant appeal brief (see page 13, line 3 and 4 of the brief), a person of ordinary skill in the art of electrical engineering would have knowledge of the technology behind inductive and infrared contactless-type interfaces. Therefore, Examiner reiterates his position that one of ordinary skill in the respirator arts (which would include electrical engineering knowledge) would have knowledge of the technology behind inductive and infrared contactless interfaces and would have substituted one known electrical connection for another as stated in the rejection above.

In regard to Appellant's argument that the two wire line of the Bahr device fails to meet Appellant's claim language of "additionally designed as a tube heater" (see page 16, line 11 through page 17, line 12 of the brief), Examiner disagrees. Examiner reiterated his position in

that it can be reasonably stated that the wires associated with the signal line of Bahr are capable of producing at least a minimal amount of heat if so desired. Furthermore, Examiner takes the additional position that the signal exchange associated with the electrical signal line of Bahr would inherently produce a minimal amount of heat and therefore meets the structure defined by a "tube heater". Appellant acknowledges that at least a minimal amount of heat would be produced by the two wire line of Bahr (see page 16, line 18 through page 17, line 3). However, Appellant goes on to state that more than a minimal amount of heat would have to be produced to meet the claimed limitation of "additionally designed as a tube heater". Examiner further disagrees with this assessment and still maintains his position that giving the claim language its broadest reasonable interpretation, the inherent heating of the two wires of Bahr discussed above meets the claimed limitation of a "tube heater".

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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